

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR OPERATOR PERMIT FOR)	
KELLY GEISSLER)	PRELIMINARY ORDER DENYING
_____)	APPLICATION FOR OPERATOR
)	PERMIT

The Director of the Department of Water Resources (“Department”), being charged with the enforcement of certain statutes of the state of Idaho and the rules of the Department, and being authorized to regulate the licensing of well drillers and operators of well drilling equipment to protect the ground water resources of the state against waste and contamination hereby makes the following Findings of Fact, Conclusions of Law and Order:

FINDING OF FACT

1. On June 5, 2003 Mike Knie of Knie Pump and Drilling (license # 417) submitted to the Department an Application for Class II Operator Permit for Kelly Geissler (“Geissler” or “applicant”).
2. Pursuant to IDAPA Rule 37.03.10033 (Well Driller Licensing Rule 33), the Department conducted a review of the applicant’s compliance history that is summarized as follows:
 - a. On June 14, 2000, the Department issued a Notice of Violation to both Rod Ransom (“Ransom”) of Ransom Water Wells (license No. 575) and to the applicant, a permitted operator for Ransom. The applicant was found drilling without an operator card in his possession and allowing an unlicensed person to operate the drilling equipment while he slept on site.
 - b. On May 21, 2002, the Department issued a Notice of Violation to the applicant and to Ransom for failing to meet well construction standards for two (2) wells located in Elmore County. The Department attached Ransom’s driller’s bond to provide for repair of one the two wells by another licensed driller.
 - c. On July 14, 2003, the Department issued another Notice of Violation to the applicant and to Ransom, for intentionally submitting false information on a well driller’s report dated July 9, 2001, involving one of the two Elmore County wells. On August 1, 2003, the applicant and Ransom agreed to resolve the violation, in part, by entering into a consent agreement with the Department.
3. The Department held a telephone conference on July 2, 2003, with the Driller’s Advisory Committee (“Committee”) to address the applicant’s compliance history. The Committee considered the matter as provided for in IDAPA Rule 37.03.10.033.04 and recommended

that the Department issue an operator card to the applicant with appropriate conditions.

4. On August 14, 2003, the Department held a second telephone conference with the Committee to reconsider Geissler's Application for Operator Permit in light of a July 14, 2003 Notice of Violation issued to Geissler. After review of the Notice of Violation, the Committee recommended that the Department not process an Application for Operator Permit for Geissler for a period of at least one year.
5. The Department issued another Notice of Violation on October 23, 2003 to Geissler for intentionally submitting false information on a well drillers report received by the department on July 3, 2001.
6. Conclusions of law later determined to be findings of fact are hereby deemed to be findings of fact.

CONCLUSIONS OF LAW

1. Section 42-238(8), Idaho Code, provides the following:

Employees of drilling firms, copartnerships, corporations or associations are authorized to operate drilling equipment for the driller after obtaining an operator's permit from the director. Such employees shall be designated as operators.

 - (a) A driller is responsible for adequate supervision of the operators during the construction of each well. A driller shall be responsible for the work of the operators employed by the driller.
 - (b) An operator shall only operate drilling equipment for the driller listed on the operator's permit.
 - (c) An operator's permit shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a twenty-five dollar (\$25.00) application fee.
 - (d) The applicant for an operator's permit shall successfully complete a written or oral examination.
 - (e) The water resource board shall adopt rules for the issuance, revocation and renewal of an operator's permit in accordance with chapter 52, title 67, Idaho Code. The board is also authorized to adopt rules on professional responsibility and continuing education requirements not to exceed twenty (20) hours during each permitting period. The rules shall consider such factors as
 - (i) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells;

- (ii) Demonstrated previous compliance with well drilling laws and rules including well construction standards; and
 - (iii) General understanding of well drilling equipment, well construction techniques, basic geology and map reading.
2. IDAPA Rule 37.03.10.033.04 (Rule 33.04) provides the following:

License Or Operator's Permit Issued With Conditions Or Denial Of License Or Operator's Permit. The director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. If the director, after consulting with the Driller's Advisory Committee, established in Rule 80, determines that the applicant's compliance history includes significant violations of well drilling laws and/or rules, including well construction standards, the director may deny the license or permit, refuse to issue for a specified time, or issue with conditions. The director may only consider the applicant's compliance history for the five (5) year period immediately preceding the application being filed. If the director determines that the applicant is not qualified, the director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources".

- 3. Upon investigation and review of the applicant's compliance history, the Department concludes that the applicant is responsible for significant violations during the past five years of well drilling statutes and rules including well construction standards.
- 4. The Department should follow the recommendation of the Driller's Advisory Committee and should not process Geissler's Application for Operator Permit for a period of one year commencing August 14, 2003.
- 5. Findings of fact later determined to be conclusions of law are hereby deemed to be conclusions of law.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

- 1. The application for Operator's Permit in the name of Kelly Geissler is **DENIED** for a period of two (2) years. During this time, the applicant is responsible to acquire the necessary continuing education credits, including those additional credits described in condition 5 below.
- 2. After two (2) years, the applicant may submit a new application to the Department to be an operator for a driller who has a satisfactory compliance history and no restrictions on the driller's license.

3. Within two (2) years following denial of this application, and prior to making a new application for an operator permit, the applicant shall obtain a certification of welding skill from American Welding Society or other comparable institution, satisfactory to the Director.
4. The applicant shall successfully pass the driller exam and shall demonstrate a good knowledge of the rules and good drilling practices before acting as an operator.
5. The applicant shall maintain continuing education credits during this first year prior to making application. In addition to the 16 hours required during the normal 2-year license/permit period, the applicant shall secure 3 hours of specific continuing education in hydrology or geology, with course or courses pre-approved by the Continuing Education Committee of the Idaho Ground Water Association.
6. Upon the applicant's successful completion of the provisions in this order and submittal of a new application, the Department will reconsider issuance of an Operator Permit to the applicant.

DATED this 24th day of October, 2003.

_____/Signed/_____
L. GLEN SAXTON, P.E.
Administrator
Water Management Division